

REMARKS

Entry of this amendment and reconsideration of this application, as amended, is requested.

With entry of this amendment, the claims in the application are claims 2, 5-8 and 10-13. Claims 1, 3, 4 and 9 have been canceled.

Of the pending claims, claim 10 has been amended to be in independent form by addition thereto of the substance of claim 1. Additionally, reference to skin care products has been deleted from claim 10.

Claims 2, 5-7, 8 and 13 have been amended to depend from claim 10. Accordingly, claims 2, 5-8 and 11-13 depend, directly or indirectly, from claim 10.

The Examiner is requested to reconsider the Section 102(b) rejection of claims 1-4, 8-9 and 13 as anticipated by Bessette et al. (U.S. 6,004,569). While the applicant does not agree with the basis for the Examiner's rejection, and particularly with respect to the rejection of claim 13 and the Examiner's interpretation of the significance of the claim language "cinnamon flavor", "oral care product" and "consisting essentially of", it is noted that claim 10 was not included in the Section 102(b) rejection based on Bessette et al. Accordingly, since claim 10 has been made the applicant's main claim, the Section 102(b) rejection on the basis of Bessette et al. is not applicable even under the Examiner's interpretation of the applicant's claim language. Accordingly, withdrawal of the Section 102(b) rejection is thought to be in order and is requested.

The Examiner is also requested to reconsider and withdraw the Section 102(b) rejection of claims 1-4, 8-11 and 13 as anticipated by Slangan et al. As earlier noted, reference to skin care products has been deleted from claim 10. The prior reference in claim 10 to skin care products appears to be the basis for the Examiner's including claim 10 in the Section 102(b) rejection based on Slangan et al. While the applicants do not agree with the Examiner's reasoning, the indicated amendment of claim 10 to call for a consumer product selected from oral care products and chewing gums should obviate the Section 102(b) rejection of claim 10 based on Slangan et al. and, since all of the other claims depend from claim 10, the Section 102(b) rejection of claims 1-4, 8-11 and 13 (now claims 2, 8-11 and 13) should be withdrawn.

For similar reasons, the Examiner's Section 103(a) rejection of claim 12 based on Slangan et al. in view of S. Arctander and the Section 103(a) rejection of claims 5-7 based on Slangan et al. and Bauer et al. should be withdrawn.

As noted earlier, claims 5-7 and 12 now depend from claim 10 which is thought to be allowable for reasons noted above. The Examiner's secondary references (S. Arctander and Bauer et al.) do not fill in the deficiencies noted above with respect to Slangan et al. relative to claim 10 from which claims 5-7 and 12 depend. Accordingly, withdrawal of the Section 103(a) rejections of claims 5-7 and 12 is requested.

It is believed that the applicant's claims, as amended, are free from the rejections of record and otherwise allowable for the reasons noted. However, the applicant's wish to note on the record that they do not agree with the position the Examiner has taken regarding the significance of the language "cinnamon flavor", "oral care product" and "consisting essentially" as used by the applicant. While the Examiner's position has been mooted in view of the claim amendments which have been proposed above, the applicant respectfully submits that the language "cinnamon flavor" inherently represents a compositional limitation, i.e. the composition is intended for oral ingestion or taste purposes. Clearly this is the intent and purpose of a "flavor". This is a substantive difference over the pesticidal compositions of, for example, Besette et al. Pesticides are not safe for oral ingestion. The pesticidal composition of Besette et al. includes acetone as an important component. It is well known that acetone should not be consumed. See, for example, the description of acetone provided in the Internet's Wikipedia (relevant pages attached, see particularly page 4). In the circumstances, it is evident that the acetone-containing pesticides of Besette et al. cannot be viewed as cinnamon flavor compositions which carry with them the clearcut indication that the compositions are orally acceptable for flavor purposes. To repeat, certain words, such as flavor, regarding prospective uses, inherently carry with them compositional restrictions which necessarily exclude something poisonous or harmful. Accordingly, it is urged that the applicant's claim references to "cinnamon flavor" compositions and "oral care" products are compositionally limiting and should be meaningful in distinguishing over the Examiner's references, although, as noted, the present amendment making claim 10 the applicant's main claim is thought to moot the issue.

The applicant also does not agree with the Examiner's view that the language "consisting essentially" is, in the present context, equivalent to "comprising". Manifestly, the term "consisting essentially" as used in applicant's claim 13 excludes the presence of something which would change the essence of the invention, e.g. the inclusion of a major amount of acetone as in Besette et al. which changes a flavor composition suitable for use in flavoring to something which should not be

consumed. The applicant agrees that for applying prior art under 35 U.S.C. 102 and 103, absent a clear indication in the specification or claims of what the basic and novel characteristics actually are, "consisting essentially of" may be construed as equivalent to "comprising" as noted in the PPG decision (156 F.3d 1351, 48 USPQ2d 1351, Fed. Cir. 1998). However, the applicant's specification gives a clear indication that the claimed composition is to provide a cinnamon flavor which manifestly limits applicant's claims to something that functions on the basis of its taste and is safe to use for this purpose. Applicant's claim 13 recites the components essential for the claimed oral care or chewing gum product and the "consisting essentially" language clearly is appropriate to exclude the addition of materials, e.g. acetone, which would prevent the claimed function.

The applicant submits, with respect, that his claims distinguish patentably from the cited art. Accordingly, favorable reconsideration with allowance is requested.

Respectfully submitted,

MORGAN LEWIS & BOCKIUS LLP

By 

Paul N. Kokulis
Reg. No. 16773

Date: November 6, 2008

Customer No. 09629
1111 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Phone: (202) 739-3000
Facsimile: (202) 739-3001
Direct: (202) 739-5455